

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ewing Redmond Samuels,

10 Petitioner,

11 v.

12 Charles L Ryan, et al.,

13 Respondents.
14

No. CV-19-02754-PHX-ROS (ESW)

ORDER

15
16 The Court has reviewed Petitioner's "Motion for Appointment of Advisory
17 Counsel" (Doc. 21).

18 "Indigent state prisoners applying for habeas corpus relief are not entitled to
19 appointed counsel unless the circumstances of a particular case indicate that appointed
20 counsel is necessary to prevent due process violations." *Chaney v. Lewis*, 801 F.2d 1191,
21 1196 (9th Cir. 1986). However, the Court has discretion to appoint counsel when "the
22 interests of justice so require." 18 U.S.C. § 3006A (a) (2) (B). "In deciding whether to
23 appoint counsel in a habeas proceeding, the district court must evaluate the likelihood of
24 success on the merits as well as the ability of the petitioner to articulate his claims *pro se*
25 in light of the complexity of the legal issues involved." *Weygandt v. Look*, 718 F.2d 952,
26 954 (9th Cir. 1983) (per curiam) (citations omitted). "Neither of these considerations is
27 dispositive and instead must be viewed together." *Palmer v. Valdez*, 560 F.3d 965, 970
28 (9th Cir. 2009).

1 Having considered both elements, Petitioner has not shown that the interests of
2 justice require the appointment of counsel in this case. Petitioner has not demonstrated a
3 likelihood of success on the merits, nor has he shown that he is experiencing difficulty in
4 litigating this case because of the complexity of the issues involved. Petitioner's filings
5 with the Court indicate that Petitioner is capable of navigating this proceeding and
6 presenting cogent arguments to the Court. Petitioner is in a position no different than
7 many pro se prisoner litigants. Should the Court determine that an evidentiary hearing in
8 this matter is required or counsel is necessary for the effective utilization of discovery
9 procedures, counsel may be appointed. *See* Rules 6(a) and 8(c), 28 U.S.C. foll. § 2254.
10 Petitioner's Motion (Doc. 21) will be denied.

11 The Court also has reviewed Petitioner's "Motion for Federal Investigation into
12 the Death of Royce Emmett Walker" (Doc. 22), which is construed as a motion for
13 discovery.

14 Although a habeas proceeding is a civil suit, a habeas petitioner "does not enjoy
15 the presumptive entitlement to discovery of a traditional civil litigant." *Rich v. Calderon*,
16 187 F.3d 1064, 1068 (9th Cir. 1999); *Bracy v. Gramley*, 520 U.S. 899, 904 (1997)
17 (stating that unlike other civil litigants, a habeas corpus petitioner is not entitled to broad
18 discovery). A court considering a habeas corpus petition is ordinarily limited to the state
19 court record. *See Cullen v. Pinholster*, 563 U.S. 170, 180 (2011) (holding that "review
20 under § 2254(d)(1) is limited to the record that was before the state court that adjudicated
21 the claim on the merits"). Yet under Rule 6(a) of the Rules Governing § 2254 Cases, 28
22 U.S.C. foll. § 2254, a court may grant a habeas petitioner's discovery request upon a
23 showing of good cause. *Bracy*, 520 U.S. at 904. Good cause exists "where specific
24 allegations before the court show reason to believe that the petitioner may, if the
25 facts are fully developed, be able to demonstrate that he is entitled to relief." *Id.* at
26 908-09. The Ninth Circuit Court of Appeals has advised that courts "should not
27 allow prisoners to use federal discovery for fishing expeditions to investigate mere
28 speculation." *Calderon v. U.S. Dist. Court for the Northern Dist. Of California*, 98 F.3d

1 1102, 1106 (9th Cir. 1996). The Court does not find good cause to allow Petitioner to
2 conduct discovery. Accordingly, Petitioner's Motion (Doc. 22) will be denied.

3 Based on the foregoing,

4 **IT IS ORDERED** denying Petitioner's "Motion for Appointment of Advisory
5 Counsel" (Doc. 21).

6 **IT IS FURTHER ORDERED** denying Petitioner's "Motion for Federal
7 Investigation into the Death of Royce Emmett Walker" (Doc. 22).

8 Dated this 26th day of September, 2019.

9
10
11 

12 Honorable Eileen S. Willett
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28